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March 8, 2017

Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: DA 16-1427 – Comments Sought on Mobilitie, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment of Small Cell Infrastructure (WT Docket No. 16-421)

To whom it may concern,

The following commentary shares the experience of the New Jersey Pinelands Commission regarding the siting of wireless facilities within our jurisdiction. It includes an overview of our role as an agency, the evolution of our regulatory framework for the siting of wireless facilities, a brief analysis on the implementation of this framework, and our current efforts to assess the impacts of small cell infrastructure and adapt accordingly. Please consider our experiences outlined below as you develop the factual record as described in the above referenced notice.

I. The Pinelands Commission & the Pinelands National Reserve

The New Jersey Pinelands Commission is an independent state agency whose mission is to "preserve, protect, and enhance the natural and cultural resources of the Pinelands Area, and to encourage compatible economic and other human activities consistent with that purpose." Congress created the Pinelands National Reserve through the passage of the National Parks and Recreation Act of 1978 (herein the Federal Act).¹ The 1.1 million acre Pinelands National Reserve has the distinction of being the country's first National Reserve, and spans portions of seven counties and all or part of 56 municipalities. In response to the federal legislation, the Pinelands Commission was established by the state of New Jersey in 1979 through the passage of the Pinelands Protection Act.²

The Commission carries out its mission through the implementation of the Pinelands Comprehensive Management Plan (CMP).³ The CMP guides land use, development and natural resource protection programs in the 938,000-acre Pinelands Area portion of the Pinelands National Reserve. The framework of the CMP intends for the local governments of the Pinelands Area to be the principal entities implementing the CMP, with the Pinelands Commission providing technical assistance to the localities,

¹ P.L. 95-625; codified at 16 U.S.C. 471i

² N.J.S.A. 13:18A-1 et seq.

³ N.J.A.C. 7:50

monitoring development review, and updating the CMP.⁴ The CMP requires that local master plans and land development ordinances be in conformance with the objectives of the CMP and certified as such by the Commission. Once certified, such plans and ordinances serve as the governing regulations for each municipality to implement.

The Commission monitors development review via a dual review process with local permitting agencies. This ensures that all development approved by local permitting agencies is located, planned, designed, laid out, constructed and serviced consistent with the requirements of the CMP.⁵ No local permitting agency shall consider an application complete for review until the Pinelands Commission has found such application to be complete via the issuance of a Certificate of Filing.⁶ Local permitting agencies subsequently give notice to the Commission of their final determination on any application for development in the Pinelands Area, and, if the application is approved, the Commission must determine within 15 days whether the approval of the application for development raises substantial issues with respect to the conformance of the proposed development with the CMP.⁷ If substantial issues are found, the application must be further reviewed by the Commission. If not, the Commission will issue a letter authorizing the development to proceed as approved.

It is important to note the requirements of the Pinelands Commission's institutional framework that are derived from the Federal Act. The Commission is the planning entity that is called for by the Federal Act,⁸ and the CMP constitutes the management plan for the Pinelands National Reserve required by the Federal Act.⁹ In this regard, the CMP is not only a creation of state law, but of federal law as well. Furthermore, the adoption of the CMP and, and any amendment thereto, must be reviewed and approved by the U.S. Secretary of the Interior prior to its taking effect.¹⁰ The standards under which the Secretary is to review such revisions require that they consider whether the plan, if implemented, would adequately protect, inter alia, the significant scenic resources of the Pinelands National Reserve.¹¹ Lastly, the Secretary of Interior appoints one of the fifteen members of the Pinelands Commission.¹²

II. The Evolving Regulatory Framework for Local Communications Facilities

A. 1981-1995: Protection of scenic values via height limitations

Since its initial adoption in 1981,¹³ the CMP has included limitations on the height of structures in order to protect the significant scenic resources of the Pinelands Area.¹⁴ The height regulations that governed between 1981 and 1995 limited the height of most structures to thirty-five feet in all Pinelands Area management areas except Regional Growth Areas and Pinelands Towns (the two most development-oriented management areas). This severely restricted the ability to site wireless facility support structures greater than thirty-five feet in height in about 89% of the Pinelands Area.

⁴ N.J.A.C. 7:50-3.1(a)

⁵ N.J.A.C. 7:50-4.31

⁶ N.J.A.C. 7:50-4.34

⁷ N.J.A.C. 7:50-4.40

⁸ 16 U.S.C. 471i(d)

⁹ 16 U.S.C. 471i(f)

¹⁰ 16 U.S.C. 471i(g)

¹¹ 16 U.S.C. 471i(g)(2)(E)

¹² 16 U.S.C. 471i(d)

¹³ Effective January 14, 1981 (13 N.J.R. 91(e))

¹⁴ N.J.A.C. 7:50-5.4

B. 1995-2012: A new regulatory framework for local communications facilities

In 1995, the Commission adopted amendments to the CMP in response to concerns raised by representatives of the cellular telephone industry and in recognition of the legitimate need for the provision of wireless communication services within the Pinelands Area.¹⁵ The amendments allowed local communication facilities¹⁶ with supporting structure greater than thirty-five feet to be a permitted land use, at the option of the local government, in those management areas outside of Regional Growth Areas and Pinelands Towns, provided that they met the procedures and siting standards established in the amendment intended to protect the significant scenic resources of the Pinelands Area.¹⁷

The adopted standards included requirements for: the demonstration of both a need for the facility to serve the needs of the Pinelands and a need to be located in the Pinelands; the use of existing structures where feasible; the design of supporting structures such that they are able to accommodate the needs of other local communication providers; in certain areas, the required siting of such facilities in non-residential zoning districts, on developed publicly owned lands, at existing first aid or fire stations or on the disturbed lands associated with an approved resource extraction operation or existing landfill; the prohibition of such facilities within five miles of the Forked River Mountains; and the minimization of visual impacts to certain enumerated land uses and significant natural features.

The amendments further required that when a local communication facility exceeding thirty-five feet in height is proposed to be located outside a Regional Growth Area or Pinelands Town, a comprehensive plan for the entire Pinelands is to be submitted by providers of “like-service” that must include the approximate location of all existing and proposed facilities expected within a ten-year time horizon. The objective of this comprehensive planning process is to ensure that the number of facilities proposed in the most ecologically-sensitive Pinelands management areas are the least number necessary to provide adequate service. Meeting this objective rests on the premises that such wireless service relies on a network of facilities; the location of each facility has an effect on the location of other facilities; and a well-designed and integrated network can avoid the proliferation of towers throughout the Pinelands Area and, most importantly, in its most ecologically-sensitive areas. Upon certification of the comprehensive plan, applications seeking to construct such facilities are reviewed in accordance with CMP environmental regulations (related to such things as wetlands and wetland buffers and the presence of threatened and endangered species), the standards for siting wireless facilities (discussed above), as well as the certified comprehensive plan authored by the providers of like service (which specifies approximate locations of proposed facilities).

Cellular service providers licensed to provide service in our jurisdiction responded to these amendments by submitting a comprehensive plan that was approved by the Commission in September, 1998.¹⁸ Providers of different “like-services”, such as PCS services and Public Emergency Communications services, have subsequently developed plans that have built upon, and effectively amended, the initial network configuration of facilities developed in the initial plan by the cellular providers. To date, there have been five amendments to the original plan. The first amendment, submitted by the PCS providers,¹⁹ was approved by the Commission in January 2000. The second amendment, submitted by AT&T

¹⁵ Effective August 21, 1995 (27 N.J.R. 3158(a))

¹⁶ The CMP defines “Local communications facility” as an antenna and any support structure, together with any accessory facilities, which complies with the standards of N.J.A.C. 7:50-5.4 and which is intended to serve a limited, localized audience through point to point communications, including cellular telephone cells, paging systems and dispatch communications. It does not include radio or television broadcasting facilities or microwave transmitters.

¹⁷ N.J.A.C. 7:50-5.4(c)

¹⁸ Participants included Bell Atlantic Mobile, Comcast, and Nextel

¹⁹ Participants included Sprint Spectrum and Omnipoint

wireless, was approved by the Commission in December 2003. The third amendment, submitted by T-Mobile, was approved by the Commission in November 2011. The fourth amendment, submitted on behalf of the seven Pinelands Area county emergency services, was approved in May 2012. The fifth amendment, submitted by Sprint, was approved by the Commission in November 2013.

C. 2012-Present: Application review efficiency

In 2012, the Commission amended the CMP to exempt from Commission review the installation of local communications antenna on existing communications or other suitable structures, provided that such installations are consistent with a comprehensive plan for local communications facilities that has been approved by the Commission.²⁰ This amendment was the result of the Pinelands Commission seeking to streamline its development review process. It had become evident that many existing wireless facility support structures yielded multiple applications for colocation or expansion of antennas. In weighing the trade-offs between administrative costs and potential impact of these modifications to existing support structures, it was determined that such applications should be exempt from review by the Commission.

III. Implementation to Date

A. Comprehensive Plans for Local Communications Facilities

In totality, the approved comprehensive plans for local communications facilities include the location of approximately 241 sites with either existing or proposed facilities.²¹ It is important to note that many of these locations are scheduled to be shared by multiple providers and many of these locations currently are proposed to be located on existing structures. As an indicator on the progress of the build-out of these plans, we estimate that approximately 60% (145 sites) have at least one provider with installed facilities.²²

B. Processing of Applications for Siting Local Communications Facilities

Since the 1995 CMP amendments described in II.B, the Commission has received 278 applications determined to be complete that proposed the siting of wireless telecommunications facilities.²³ On average it takes 199 days from the initial inquiry regarding proposed development to a finding of application completeness. The length of time between initial inquiry and a finding of completeness is highly variable and dependent on many factors that are not within the control of the Commission staff (e.g., the stage of site planning or land acquisition by the applicant at the time of initial inquiry, which is often a pre-application meeting; or the submission of applications with incomplete information).

Of those 278 applications found to be complete, 219 have received all necessary approvals from the Commission and local permitting agency to proceed with development. The 59 remaining applications have not received a final approval from the Commission, which may be the result of one of these likely factors: 1) the application was denied by the local permitting agency; 2) the application was withdrawn by the applicant; or 3) the development proposed in the application became exempt from our application requirement due to the 2012 CMP amendment described in Section II.C above.

²⁰ Effective January 3, 2012 (44 N.J.R. 72(a))

²¹ Please note that this number underrepresents the actual number of sites within the Pinelands Area as there are instances where facilities have been developed in the most-development oriented management areas or on suitable existing structures without the need for an amendment to a local communications facilities comprehensive plan.

²² Please note that actual build out may be greater than 60% given that we no longer receive applications to install local communications facilities on existing structures. Many proposed sites included in the plan and amendments were to be on existing structures, not all of which are wireless facilities support structures.

²³ This includes applications proposing to develop new facility support structures as well as applications proposing to collocate on existing structures.

Since 1995, the Commission has not formally denied an application for the siting of a wireless telecommunications facility that has received local approval. There have been many instances where additional information was required by the Commission to be submitted from either the local permitting agency or from the applicant after a local decision to approve was reached. In these instances it is likely that either a substantial issue was found in the approved development or not enough information was submitted by the local permitting agency regarding the approval or by the applicant regarding the approved development proposal. During the review for application completeness, any identified inconsistency with the CMP and the proposed development is communicated to the applicant and stated in the Certificate of Filing.

For those applications that have received local agency approval following a finding of completeness from the Commission, it takes an average of 280 days between the issuance of application completeness to the Commission to receiving notice that a local agency has made a determination. As noted above, the Commission must determine within 15 days whether the approval of the application for development raises substantial issues with respect to the conformance of the proposed development with the CMP. It takes an average of 85 days between the Commission receipt of a final determination from the local permitting agency and the Commission's issuance of a final approval. This average reflects the additional time required to for either the Commission to formally review an application; the applicant or the local permitting agency to submit additional information; or for the applicant to submit revisions to the proposal in order to remedy identified inconsistencies with the CMP.

There has been a significant drop-off in applications since the 2012 CMP amendment discussed in II.C above. Between 1995 and 2003, 138 applications received a certificate of filing. Between 2005 and 2010, 117 received a certificate of filing. Between 2012 and 2016, only 3 applications have received a certificate of filing. We assume that this reduction is in part due to the exemption provided in the 2012 amendment. However, we acknowledge that other exogenous factors may also be contributing to this reduced number of applications.

IV. Discussion

The Pinelands Commission is a unique regulatory institution that coordinates land development policies with local, state, and federal agencies in pursuit of its mission. It has developed a unique regional regulatory framework for the siting of local communications facilities and their support structures that has protected the scenic resources of the Pinelands Area's most ecologically-sensitive areas.

Our position is that the Commission has been successfully balancing the protection of the significant and unique resources of the state designated Pinelands Area, which is subsumed within the Pinelands National Reserve, with the demand, and federal requirements, for the provision of wireless telecommunications service. As discussed in II.B above, the Commission has adapted to the changing need for the provision of wireless coverage. As discussed in II.C above, the Commission periodically assesses its permitting processes and looks for efficiencies, where possible, that are not to the determinant of our mandate. This has included the rule change that exempts installation of local communications facilities on existing suitable structures from application to the Pinelands Commission.

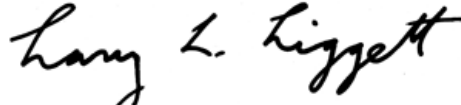
Furthermore, the Commission finds that the dual review process has been, and will continue to be, a vital component of carrying out its mission, and is necessary especially given the directive from the Federal Act to protect the scenic resources of the Pinelands Area. Our position is that the costs imposed upon wireless providers have been justified to protect the significant resources of the Pinelands Area. This dual review process may at times result in application processing times that stretch the federal goals

for local decision-making. However, we have not found this to be onerous nor have we received any complaints from the wireless providers operating within our jurisdiction.

As such, it is our position that, consistent with the Federal Act, the provisions of the CMP should be accorded comity by the FCC, and, furthermore, that the outcome of any such declaratory ruling must harmonize the goals and intent of the Federal Act with the relevant federal statutes under consideration in the declaratory ruling.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Larry L. Liggett". The signature is written in a cursive, flowing style.

Larry L. Liggett
Director, Land Use & Technology Programs

DBL/P10

c: Frank Hayes, Commissioner (Federal Designee), Pinelands Commission
Michael J. Darcy, Executive Director, New Jersey League of Municipalities